

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
<b>CITY OF NEWELL</b> <b>Buena Vista County, Iowa</b>	NO. 2008-AQ- <del>38</del> NO. 2008-SW- <del>29</del>

TO: Mayor Dick Christiansen  
City of Newell  
PO Box 315  
Newell, Iowa 50568

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the City of Newell (the City) for the purpose of resolving the air quality and solid waste disposal violations which occurred during the demolition and disposal of two commercial buildings in Newell, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bryon Whiting, Field Office #3  
Iowa Department of Natural Resources  
1900 Grand Avenue - Gateway North Mall  
Spencer, Iowa 53101  
Phone: 712/262-4177

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted

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pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. On December 20, 2007, Marion Burnside, DNR asbestos coordinator, received an anonymous complaint regarding the demolition of two commercial buildings located in Newell, Iowa. On December 20, 2007, Mr. Burnside contacted the City of Newell and spoke to the City Clerk, Melinda Buchholz. Ms. Buchholz informed Mr. Burnside that the City had hired Wirtjers Trucking, Incorporated (Wirtjers) to demolish two buildings located at 209 South Fulton and 213 South Fulton in Newell. Ms. Buchholz stated the City did not inspect the buildings for asbestos containing material and did not notify the DNR of the demolition.

2. On December 20, 2007, Marion Burnside then contacted Wirtjers and spoke to Jason Kreft. Mr. Kreft stated that Wirtjers did not inspect the buildings for asbestos containing material and did not notify the DNR of the demolition. Mr. Kreft stated Wirtjers paid Jacob Nielsen \$100.00 per load to dump the demolition debris at Mr. Nielsen's farm located at 5995 185<sup>th</sup> Avenue near Newell. Mr. Burnside informed Mr. Kreft that the debris needed to be inspected by a licensed asbestos inspector and under no circumstances could the debris pile be burned. Mr. Burnside told Mr. Kreft that he needed to inform Mr. Nielsen not to burn the pile. Following the conversations with Mr. Kreft and Ms. Buchholz, Mr. Burnside contacted DNR Field Office 3 regarding the situation. Field Office 3 estimated the total gross building area of the two buildings that had been demolished to be 3,829 square feet.

3. On December 31, 2007, Doug Weir of Ames Environmental spoke to Mr. Burnside and stated that on December 26, 2007 he had gone to the Nielsen farm site with a Wirtjers' representative and the demolition debris had been burned. Mr. Wier stated when he arrived that he could not inspect the material because it was still smoldering.

4. On January 2 and January 16, 2008, Mr. Burnside conducted investigations at the demolition locations in Newell and at Mr. Nielsen's farm. Mr. Burnside confirmed that an inspection had not occurred; that a notification had not be submitted; that the buildings had been demolished and deposited at Mr. Nielsen's farm; and that the debris had been burned. Since the buildings were not tested for asbestos prior to demolition and the debris was burned before testing could occur, the demolition waste is considered asbestos containing material. In addition to the building debris, Mr. Burnside observed tires and metal band remnants in and near the burn pile.

5. February 8, 2008, DNR issued a Notice of Violation letter to the City for the asbestos violations in connection with the demolition and disposal of the commercial buildings in Newell. The violations included failure to inspect, failure to notify, failure to have a trained supervisor on site, and failure to follow the waste disposal requirements. The

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City was required to obtain the services of an asbestos abatement contractor and properly remove the debris from the demolition locations in Newell and from Mr. Nielsen's farm. The debris was required to go to the landfill as asbestos containing material.

6. On February 26, 2008, DNR issued a Notice of Violation letter to the City for violations of the open burning and solid waste disposal regulations in connection with the burning of the demolition debris. The City was notified the matter was being referred for further enforcement.

7. Over the course of the spring and summer 2008, the City has worked with Wirtjers and Mr. Nielsen in developing an agreement for the cleanup of the debris from Mr. Nielsen's farm.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The City hired Wirtjers to demolish two commercial buildings and is responsible for the proper disposal of the debris. The debris was allowed to be burned because it had been improperly disposed of. The above facts demonstrate noncompliance with this provision.

3. 567 IAC 23.2(3)"j" provides an exemption for the controlled burning of a demolished building by a city provided a number of requirements are met, including but not limited to conducting a thorough asbestos inspection prior to the demolition and submitting a notification to the DNR at least 10 days prior to the demolition and at least 30 days prior to the controlled burn. The above facts do not constitute an exempt burning because the City did not conduct a thorough asbestos inspection prior to demolishing the buildings and did not submit notifications to the DNR prior to the demolition or the burning.

4. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

5. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence

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that an asbestos inspection was ever completed prior to the demolition of the buildings. The above facts indicate a violation of this provision.

6. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the buildings. The above facts indicate a violation of this provision.

7. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

8. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The demolition debris from the buildings was taken to Mr. Nielsen's farm and burned rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

**V. ORDER**

THEREFORE, it is hereby ordered and the City agrees to do the following:

1. The City shall hire a trained asbestos contractor and remove all of the remaining debris at the demolition site in Newell and at Mr. Nielsen's property in accordance with the asbestos and solid waste disposal regulations. The debris, including soil and rubble, must be disposed of as asbestos containing material at the landfill. This removal shall be completed within 30 days following the soybean harvest in the field surrounding Mr. Nielsen's property;
2. The City shall submit receipts of all the landfill tickets to DNR Field Office 3 within 10 days of completion of the project; and
3. The City shall pay a penalty of \$6,000.00 in accordance with the following payment schedule:

\$1,500.00 due October 15, 2008	\$1,500.00 due October 15, 2009
\$1,500.00 due April 15, 2009	\$1,500.00 due April 15, 2010

If any of the payments are not made in accordance with the payment schedule, the remainder of the penalty shall be due immediately.

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**VI. PENALTY**

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an \$6,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - Failure to follow the proper asbestos NESHAP regulations and solid waste disposal regulations by the improper open burning and disposal of the buildings has allowed the City to save time and money. Additionally, the City saved time and money by not properly inspecting the buildings for asbestos and notifying the DNR of the demolition. However, any economic benefit the City may have initially received will be negated by the costs of the final cleanup. Therefore, no economic benefit is being assessed.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition and burning of the structures. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. \$2,500.00 is assessed for the asbestos and open burning violations cited in this administrative consent order and \$1,000.00 is assessed for the solid waste violation cited in the administrative consent order for a total of \$3,500.00 being assessed for this factor.

Culpability – Local governments have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Local governments are expected to submit proper notifications, conduct asbestos inspections, and properly conduct a demolition in accordance with DNR's regulations. Based on the above considerations, \$2,500.00 is assessed for this factor.


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**VII. WAIVER OF APPEAL RIGHTS**

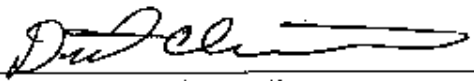
This administrative consent order is entered into knowingly and with the consent of the City. For that reason, the City waives the rights to appeal this order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 2 day of  
October, 2008.

  
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For the City of Newell

Dated this 22 day of  
Sept., 2008.

Barb Stock (Con 10-6 Buena Vista County); Kelli Book; Marion Burnside; Bryon Whiting (FO3); Dan Stipe (FO4); EPA; V1.C, VII.C.1, and VII.C.4